

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BARBARA HANNA)	
Claimant)	
VS.)	
)	
)	Docket Nos. 192,891
)	201,261
COURTYARD TERRACE)	
Respondent)	
AND)	
)	
HARTFORD ACCIDENT & INDEMNITY)	
Insurance Carrier)	

ORDER

Claimant requests review of the Preliminary Hearing Order of Administrative Law Judge Floyd V. Palmer entered in this proceeding on July 3, 1995.

ISSUES

The Administrative Law Judge denied claimant's request for benefits. The sole issue now before the Appeals Board is whether claimant's present symptoms and need for medical treatment is related to her work-related injury in January 1994, or the result of a new and distinct nonwork-related injury that occurred at home in March 1995.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, and for purposes of preliminary hearing, the Appeals Board finds as follows:

The Preliminary Hearing Order of the Administrative Law Judge should be affirmed.

(1) The jurisdiction of the Appeals Board to review preliminary hearing findings is statutorily created by K.S.A. 44-534a. The statute provides the Appeals Board may review those preliminary findings pertaining to the following: (1) whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice was given or claim timely made; and (4) whether certain defenses apply. The Appeals Board also has jurisdiction to review preliminary hearing findings if it is alleged an Administrative Law Judge has exceeded their jurisdiction. See K.S.A. 44-551, as amended by S.B. 59 (1995).

The issue now before the Appeals Board is whether claimant's present need for treatment is the result of an accidental injury that arose out of and in the course of her employment with the respondent. Therefore, the Appeals Board has the jurisdiction and authority to review this matter.

(2) Claimant alleges she initially injured her back on January 29, 1994, while she and a co-worker were moving a resident of respondent's nursing home. Due to her back injury, claimant was off work from February 4, 1994, until May 20, 1994. After she returned to work, claimant continued to experience pain in her low back and down into her left leg. In December 1994 claimant was released with a fifty (50) pound weight restriction. In January 1995 claimant's job duties were modified from passing medications only to include helping to lift residents.

On March 14, 1995, claimant saw Dr. Prostic for evaluation of her injuries sustained in January 1994. The day after seeing Dr. Prostic, claimant experienced severe pain when she turned to close the door of her house. After this incident claimant went to the hospital emergency room and reported the sudden onset of sharp low back pain and pain down the left leg. At the emergency room her pain was so severe claimant was lying on her right side and crying.

Claimant contends she is entitled to workers compensation benefits based on alternative theories. One theory is claimant's present symptoms are the natural and probable consequence of the January 1994 work-related injury and, therefore, benefits should be provided as part of that claim. The second theory is that claimant has sustained a new work-related injury to her back after January 1995 while lifting residents of the nursing home. However, the claimant lacks a medical opinion to support either theory.

At this juncture of the proceeding, the Appeals Board finds the claimant has failed to sustain her burden of proof that her present symptoms are sufficiently related to an

accidental injury that arose out of and in the course of her employment with the respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Floyd V. Palmer entered in this proceeding on July 3, 1995, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Beth Regier Foerster, Topeka, Kansas
Ronald J. Laskowski, Topeka, Kansas
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director